PPES RESORTS SDN. BHD.

v.

KERUNTUM SDN. BHD.

HIGH COURT BORNEO, KUCHING
HAIDAR MOHD. NOOR J
[SUIT NO. KG. 62 OF 1989]
4 NOVEMBER 1989

CIVIL PROCEDURE: *Quia timet injunction - Section 54(b) of the Specific Relief Act 1950 - Striking out statement of claim under O. 18 r. 19 of Rules of the High Court 1980.*

Keruntum was given a timber licence no. T/0279 to fell, extract and sell timber logs in the Long Akah area. This licence was to expire on 9 October 2008. It was issued by the Director of Forests with the approval of the then Minister of Forestry.

On 18 August 1988 Keruntum's timber licence was cancelled and they were given one week to surrender the said licence to the Director of Forests. On 28 September 1988 Keruntum filed an *ex-parte* application to seek leave of the Court for an order of *certiorari* to quash the decision of the minister for cancelling its timber licence.

PPES was issued timber licenses no. T/0339 and T/0340 with exclusive rights to fell, extract and remove timber from 2 forest areas in Sarawak. The said licenses were issued on 30 September 1988 and are valid till 28 September 1998. The timber licenses of PPES covered part of the area given earlier in the timber licence to Keruntum which was allegedly revoked by the Minister.

Keruntum's solicitors wrote a letter warning PPES from extracting timber from the disputed area. But before Keruntum could institute legal proceedings, including seeking an interlocutory injunction against PPES, it (PPES) "slapped" Keruntum with a *quia timet* injunction prohibiting it from instituting or maintaining any action in the Court against PPES.

Counsel for Keruntum raised 2 issues:

(a) Does this Court have the jurisdiction to issue a *quia timet* injunction as it did?

(b) If so, should the *quia timet* injunction be maintained or set aside?

Held:

[1] The Court has jurisdiction to grant the interim injunction because s. 54(b) of the Specific Relief Act 1950 does not in any way muzzle the Court from granting a *quia timet* injunction.

[2] The dispute between Keruntum and the licensing authorities is no concern of PPES. Therefore, PPES should not be precluded from exercising its rights under the timber licenses validly given to them. On this ground, the interlocutory injunction should not be set aside.

[3] Keruntum's application to strike out certain paragraphs of PPES's statement of claim is clearly not sustainable in view of the Court's decision not to set aside the interlocutory injunction.

[Order accordingly.]

Cases referred to:

Cotton Corporation of India v. United Industrial Bank [1983] AIR Vol 70
Harris v. Griffith [1928] Ch D 290
Fletcher v. Beeley, 28 Ch D 688
Si Rusa Beach Resort Sdn. Bhd. v. Asia Pacific Hotels Management Pte. Ltd. [1984] 1 CLJ (Rep) 346
Professor Dr. A. Kehar Bador & Ors. v. N. Krishnan & Ors. [1982] CLJ (Rep) 630
Day v. William Hill (Park Lane) [1949] 1 KB 632; [1949] 1 All ER 219

Legislation referred to:

Forest Ordinance (Cap 126) (Sarawak), ss. 2(2)(b), 51A(1), (2), 55
Specific Relief Act [Ind], s. 56(b)
Specific Relief Act 1963 [Ind], s. 41(b)
Courts of Judicature Act 1964, s. 23(2)
Rules of the High Court 1980, O. 18 r. 19
Specific Relief Act 1950, ss. 50, 54(a), (b)

For the plaintiff - J.C. Fong with H.C. Sim; M/s. Reddi & Co.
For the defendant - Colin Lau; M/s. Szetu & Co.

JUDGMENT

Haidar Mohd. Noor J:

The defendants, Keruntum Sdn. Bhd., ("Keruntum") filed by way of summons in chambers dated 18 May 1989 (Encl. 21) for an order:

(1) that the statement of claim herein be struck out on the grounds that there is no cause or reasonable cause of action, that it is frivolous and/or vexatious, or that it is an abuse of process of the Court;

(2) that alternatively, if the Court rules that the statement of claim is not to be struck out, the time to file and serve the defence is extended one (1) week from the date of such ruling;

(3) further and alternatively, that the order of the temporary injunction granted herein and dated 18 April 1989 be discharged on the grounds that this honourable Court has no jurisdiction to grant the temporary injunction, alternatively that the plaintiff fails to show that defendants' intended action is an abuse of Court's process, or on the ground of material non-disclosure or on other grounds as stated in affidavit of Lim Yew Yuat @ Lim Jew Juat affirmed on 8 May 1989.

(4) in the further alternative, if this honourable Court decides to maintain the said interlocutory injunction, for an order that all proceeds from the date of the timber or logs felled and/or extracted from the alleged licensed area (less due and reasonable operational costs properly accounted) be paid into Court or into a joint account of the solicitors of the plaintiffs and defendants and a further order that representatives from the defendants be allowed to check on the number of logs felled and extracted at the log ponds or at any exit points of the licensed area until the final determination of this action or the other action instituted as originating motion no. KG. 16 of 1988, whichever is the earlier;

(5) that if the said interlocutory injunction is discharged as in prayer (1) or prayer (3) above an inquiry/assessment be made as to the damage sustained by the defendants by reason of the said injunction so soon after the hearing of this application according to the undertaking of the plaintiffs contained in the said order, and for interest thereon pursuant

to statute and/or the Rules of the High Court 1980 at a rate to be fixed by this honourable Court;

(6) that the defendants be at liberty to enter judgment against the plaintiffs for the amounts of such damage and interest;

(7) that the costs of this application be the defendants' costs in any event.

The main prayers of Keruntum are prayers (1) and (3), the rest are ancillary prayers. In support thereof, an affidavit by Lim Yew Yuat @ Lim Jew Juat, a director of Keruntum (Encl. 21) was filed. Another affidavit in opposition was affirmed on 17 July 1989 by Lucy Leo, Keruntum's secretary (Encl. 36).

The plaintiffs, PPES Resorts Sdn. Bhd., ("PPES") gave notice of its intention to resist Keruntum's summons in chambers by relying on three affidavits filed therein namely, the affidavits of Leslie Majoribanks (a director of PPES) dated 17 April 1989 and 3 July 1989 and the affidavit of Leo Chai (Director of Forests) dated 11 June 1989.

PPES earlier on filed an *ex-parte* summons in chambers dated 17 April 1989 (Encl. 4) for an order:

That Keruntum, its agents or servants be restrained until further order of the Court from instituting or from maintaining any action in this Court against PPES in respect of PPES's Forest Timber Licenses Nos. T/0339 and T/0340 and/or PPES's rights to fell, extract and remove timber from the forest areas covered by such licenses.

The grounds of the application are contained in the affidavit of Leslie Majoribanks dated 17 April 1989.

On 18 April 1989 the Court granted the *ex-parte* application of PPES for a *quia timet* injunction against Keruntum (Encl. 6).

At the hearing of Keruntum's application, Mr. Colin Lau amended his prayer (1) by confining the striking out to only paras. 8, 9, 10 and prayer 11(ii) of PPES's statement of claim and prayer (2) was abandoned as the statement of defence had been filed by Keruntum on 20 May 1989 (Encl. 23). Mr. Colin Lau elected to submit on prayer (3) first, that is, setting aside the temporary injunction granted on 18 April 1989 and to be followed by the striking out of certain paragraphs of the statement of claim under O. 18 r. 19 of the Rules of the High Court 1980 ("Rules of the High Court").

Brief facts as to the background of the dispute over the forest areas between the parties are:

Keruntum was given a timber licence no. T/0279 ("timber licence") to fell, extract and sell timber logs in the Long Akah area. The timber licence was expressed to commence on 10 October 1983 and due to expire on 9 October 2008. It was issued under s. 55 of the Forests Ordinance (Cap. 126) by the Director of Forests with the approval of the then Minister of Forestry (see Exhibit L1 to Encl. 21). On 5 April 1988 Setiausaha Tetap, Kementerian Perancangan Sumber; on behalf of the minister, issued a show cause letter to Keruntum as to why the timber licence should not be cancelled under and by virtue of the powers vested in him (the Minister) under the new s. 51A(1) of the Forests Ordinance, as amended by the Forests (Amendment) Ordinance 1987 which came into effect on 1 January 1988 and pursuant to subsection 2 thereof Keruntum was given one month to do so. (See Exhibit L2D) Keruntum by letter dated 3 May 1988 (Exhibit L2C)

replied to L2D. On 18 August 1988 Setiausaha Tetap, Kementerian Perancangan Sumber responded to L2C and cancelled the timber licence pursuant to s. 2(2)(b) read with s. 51A(1) of the Forest Ordinance as amended and gave Keruntum one week to surrender the timber licence to the Director of Forests (see Exhibit L2B). On 25 August 1988 Keruntum through its director, wrote in response to L2B by alleging that the purported cancellation was *ultra vires*, illegal and void and intimated therein that it would be taking out process in Court to quash the purported cancellation (see Exhibit L2A).

On 28 September 1988, Keruntum filed an *ex-parte* application to seek leave of the Court for an order of *certiorari* to quash the decision of the Minister cancelling its timber licence *vide* originating motion no. KG 16 of 1988 (see Exhibit L3). The *ex-parte* originating motion and the statutory statement in accordance with Rules of the High Court were sent to the State Attorney-General and the Federal Attorney-General on 25 October 1988 (see Exhibit L4).

On 1 November 1988 the Court heard the *ex-parte* originating motion of Keruntum and leave was granted by the Court with an order:

(a) that the applicant (Keruntum) be and is hereby granted leave to apply for an order of prohibition prohibiting the 1st respondent (Minister of Resource Planning), its servants or agents from granting any forest timber licence and/or permit over the licensed area delineated in the said Forest Timber Licence No. T/0279 except in accordance with clause 16 of the said Forest Timber Licence No. T/0279;

(b) that such leave as aforesaid do operate as a stay against the 1st respondent in respect of all acts touching and concerning the grant of any licence and/or permit over the licensed area comprised in Forest Timber Licence No. T/0279 except in accordance with clause 16 of the said Forest Timber Licence No. T/0279 until hearing and disposal of the substantive motion to be filed herein. (See Exhibit L5).

On 10 November 1988 Keruntum served the order (L5) on the Minister of Resource Planning and the Government of the State of Sarawak through their agents. Similarly, the State Attorney-General and the Federal Attorney-General were served with copies of L5. Surprisingly though, L5 was also published in the Sarawak Government Gazette on 5 January 1989 and I do not know under what authority. A check by the Senior Assistant Registrar at my discretion, with the Government Printer showed that it was Keruntum through its advocates, who sent L5 for gazetting and again I do not know for what objective and purpose. As far as I know there is no legal requirement for Keruntum to do so. I made the inquiry because both Counsels disclaimed any knowledge of the said gazette.

In the meantime PPES, a limited company incorporated in Sarawak under the Companies Act 1965 and wholly owned subsidiary of the Sarawak Economic Development Corporation was issued Forest Timber Licenses Nos. T/0339 and T/0340 ("timber licenses") by the Acting Director of Forests with the concurrence of the Minister for Forestry conferring exclusive rights and privilege to fell, extract and remove merchantable timber from two forest areas *viz*., the Akah Buman Stateland and the Akah Patah Stateland Areas respectively near Long Akah in the Baram District of Sarawak. The timber licenses were issued on 30 September 1988 and are valid for a period of ten years ending on 29 September 1988. PPES has been issued permits to enter coupe by the Forest Department. Consequently PPES through its contractor, agents or servants e.g., Equatorial Timber Holding Sdn. Bhd., and Shin Yang Sdn. Bhd., proceeded to survey, construct

infrastructural facilities including roads, bridges, timber, camps, log ponds and/or storage yards in connection with the felling, extraction and removal of timber from the said forest areas. Extraction and removal of timber logs from the said areas commenced in October 1988 and are still continuing. The timber licenses of PPES covered part of the area given earlier under the timber licence to Keruntum which was allegedly revoked by the Minister.

Keruntum claimed it came to know of the logging operations in the said forest areas comprised in timber licence allegedly revoked, sometime in January 1989 whereby Keruntum lodged a police report on 26 January 1989 seeking the police assistance and investigation and to stop the third parties from working on its alleged licensed area. (See Exhibit L7). Since there was no action from the police, Keruntum wrote a letter to the Section Forest Officer in Miri with a copy to the Director of Forests seeking clarification of the third parties' rights, etc., on the said forest areas (see Exhibit L8). Whilst Keruntum was waiting for a reply from the Forest Department, PPES's solicitors, M/s. Reddi & Co., by a letter dated 13 April 1989 notified Keruntum that PPES has been properly licensed by the Government of Sarawak to extract timber from part of the forest concession area in Long Akah, Baram District (see Exhibit L10). M/s. Reddi & Co. in L10 put Keruntum to notice that in the event Keruntum wanted to file an injunction to stop PPES from operating on PPES's licensed areas, PPES would want to be heard and therefore the application must be done *inter partes.*

On 19 April 1989 Keruntum's solicitors wrote a reply (L11) to L10 and warned PPES to stop extraction of timber from the said forest areas in view of the Court order of stay (l-5). However before Keruntum could commence legal proceedings including seeking an interlocutory injunction against PPES, instead PPES "slapped" Keruntum with a *quia timet* injunction order on 20 April 1989 (Encl. 6) prohibiting it from instituting or maintaining any action in the Court against PPES. At this juncture it should be noted that the pre-emptive action of PPES was taken because it would appear that Keruntum's solicitors did not respond to PPES's solicitors' letter (L10) notifying it that any application for injunction by Keruntum should be heard *inter partes* as PPES would like to be heard but instead Keruntum warned PPES to stop logging operations in the said forest areas.

As I said earlier the application of Keruntum is grounded on two main prayers:

(i) Paragraphs 8, 9, 10 and prayer 11(ii) of the statement of claim of PPES be struck out.

(ii) The order of interlocutory injunction granted on 18 April 1989 be discharged or set aside.

As Mr. Colin Lau elected to submit on ground (ii) first, I will therefore deal with the said ground.

Under this ground, Mr. Colin Lau raised the following issue:

(a) Does this Court have any jurisdiction to issue a *quia timet* injunction as it did?

(b) If so, should the *quia timet* injunction be maintained or set aside?

(a) Does the Court have any jurisdiction to issue a quia timet injunction as it did?

It is to be observed that had Keruntum responded to the notice issued by PPES' solicitor *vide* L10 that PPES be notified of Keruntum's intended application for injunction against

PPES and that PPES be heard accordingly, PPES perhaps would not have proceeded with the application of the *quia timet* injunction. Instead Keruntum *vide* L11 threatened PPES as per para. 2 as follows:

> Since your client admits extracting in our client's licensed area, we have been instructed to inform you that unless your client or its agents or servants stop extracting timber forthwith, our client shall be constrained to take all necessary legal actions **including an injunction to prevent further extraction.**
> (Emphasis added)

Faced with such a situation, it would appear that PPES decided, if I may describe, "to draw the gun first" by obtaining the *quia timet* injunction against Keruntum. Be that as it may, has the Court the jurisdiction to grant such an injunction?

Now, the power of the Court to grant an injunction, temporary or perpetual is provided under s. 50 of the Specific Relief Act 1950 (Specific Relief Act) and such power is a discretionary one. I do not think that it is seriously disputed that *quia timet* injunction is a form of an interlocutory injunction, that is, until the determination of PPES's legal rights *vis-a-vis* Keruntum's legal rights over the forest area that is in dispute. In fact I would venture to say that Keruntum's proposed action and the present action of PPES would in effect be based on more or less similar facts and the Court eventually determining as to who has the legal rights to the forest area in question.

Section 54 of the Specific Relief Act prescribes the situation and circumstances when an injunction cannot be granted by the Court. Mr. Colin Lau relied on s. 54(b) to support his contention that the Court has no jurisdiction to grant the *quia timet* injunction. Section 54(b) reads:

> 54. An injunction cannot be granted:
>
> (a) ...
>
> (b) **to stay proceedings** in a Court not subordinate to that from which the injunction is sought;

Mr. Colin Lau cited the case of *Cotton Corporation of India v. United Industrial Bank* AIR [1983] Vol. 70, Supreme Court 1272 in support of his contention.

Our s. 54(b) of the Specific Relief Act is in *pari materia* with the old Indian s. 56(b). In the *Indian Cotton Corporation* case, the Supreme Court there was in fact dealing with the interpretation of s. 41(b) which replaced the old s. 56(b) when it said at p. 1274:

> A very narrow question which we propose to examine in this appeal is: Whether in view of the provision contained in s. 41(b) of the Specific Relief Act 1963, (Act for short) the Court will have jurisdiction to grant an injunction restraining any person from instituting any proceeding in a Court not subordinate to that from which the injunction is sought? The contention may be elaborated thus: Can a person be restrained by an injunction of the Court from instituting any proceeding which such person is otherwise entitled to institute in a Court not subordinate to that from which the injunction is sought? In the facts of the present case, the narrow question is whether the Corporation can be restrained by an injunction of the Court from presenting a winding-up petition against the bank? The High Court seems to hold that the Court has such powers, ... This position is seriously contested by the appellant in this appeal.

The Indian new s. 41(b) reads:

> An injunction cannot be granted:
>
> (a) ...

(b) **to restrain any person from instituting or prosecuting any proceedings** in a Court not subordinate to that which the injunction is sought.
(Emphasis added)

In the course of considering s. 41(b) the Supreme Court considered the interpretation given to the old s. 56(b) by the Courts in India. At p. 1278, Mr. Justice Desai said:

> It is true that giving a literal meaning to the provision contained in s. 56(b) which direct the power to the Court to grant injunction to stay proceedings in a Court not subordinate to that from which injunction is sought, the Court demarcated the unoccupied area by holding that even if the Court cannot grant injunction to the stay proceeding, **it can certainly injunct a party from instituting or prosecuting a proceeding in a Court not subordinate to that which the injunction is sought.**
> (Emphasis added)

The Indian Legislature amended s. 56(b) by the new s. 41(b) nullifying such interpretation so that it becomes crystal clear that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction was sought. However crystal clear it would seem on the provision of s. 41(b), the Supreme Court nevertheless commented at p. 1277:

> There is an unresolved controversy whether a Court can grant an injunction against a person from instituting or prosecuting a proceeding before itself but that is not relevant in the present circumstances and we do not propose to enlarge the area of controversy.

The above comment would appear to be relevant to the present case. Be that as it may, in the absence of clear and unambiguous language in our s. 54(b), do I then in considering the interpretation of our s. 54(b) give effect to what is now the interpretation given to the Indian s. 41(b)? To do so, to my mind, would tantamount to the Court usurping the functions of the Legislature for which I should not be disposed to do. True, access to justice must not be hampered even at the hands of the Judiciary. But here PPES alleged that the threatened act of Keruntum in instituting a suit including injunction against PPES is of such a character that it must inevitably result in injury to its legal rights over the forest area in which it said that timber licenses were properly given to them to operate by the appropriate authorities and hence PPES contended that it is entitled to an injunction restraining Keruntum from doing such act even though no damage has actually occurred. Mr. Colin Lau submitted that by way of comparison of the wordings in our s. 54(a) and (b), the absence of the word "pending" in s. 54(b) would imply that 'proceeding' in s. 54(b) includes instituting proceeding and thus will be in consonance with the Indian s. 41(b). However as I said earlier in the absence of clear and unambiguous wording in our s. 54(b) I should not venture or for that matter be hypnotised by the Indian decisions and legislation when the judicial pronouncements on s. 41(b) of the Indian Specific Relief Act 1963 are of no relevance since there is no equipollent provision in our country. Our s. 54(b) does not expressly refer to initiation or institution of proceeding as in the Indian s. 41(b). On a grammatical interpretation of the section it would be open to the Court to spell out a power to grant an injunction to restrain a person from instituting a proceeding because what is barred by the statute is an injunction to stay proceedings in a Court not subordinate to that from which the injunction is sought. If the intention of the Legislature is to abrogate the powers of the Court in granting an injunction to restrain a person from instituting or prosecuting a proceeding in a Court not subordinate to that which the injunction is sought, then there should be clear and unambiguous words as those in the Indian s. 41(b). In my view, it

is best that this matter be left to the wisdom of our Legislature as it thought fit to do, that is, whether an amendment on the line of the Indian s. 41(b) should be made or not. By way of example, is the Court powerless to grant a *quia timet* injunction in respect of intended actions by the "busybody" litigants. If it is so, the Courts may be flooded with useless cases in Court thereby wasting unnecessary judicial time. A *quia timet* injunction is a proceeding by which the Court is enabled to prevent its jurisdiction from being stultified. (See In *re Anderson-Berry, Harris v. Griffith* [1928] Ch D 290) In my view, the present wordings of our s. 54(b) does not muzzle the Court in any way from granting an interlocutory injunction in the nature of *quia timet* to restrain a person from instituting or prosecuting a proceeding. On the no jurisdiction issue, Shankar J, in the unreported case of *Li Shing Garments Manufacturing Sdn. Bhd. v. Kwong Hing Trading Sdn. Bhd.*, Suit No. 22-202 of 1986, had the occasion to consider the case of *Cotton Corporation of India Ltd. v. United Industrial Bank Ltd. supra*, relied on by Mr. Colin Lau where at pp. 5 and 6, His Lordship stated:

> 17. Mr. Sri Ram, Counsel for Kwong Hing submitted initially on the strength of s. 54(b) of the Specific Relief Act 1950 that this Court had no jurisdiction to entertain Li Sheng's application. He contended that to grant the injunction would be tantamount to staying the proceedings of a Court which was not of subordinate jurisdiction. He claimed that the case of *Cotton Corporation of India Ltd. v. United Industrial Bank Ltd.* [1983] AIR 1272 demonstrated the fallacy of the argument that s. 54(b) did not inhibit the Court from granting an injunction to restrain a party from initiating or continuing with proceedings in a Court of coordinate jurisdiction but that it only precluded the Court from directing such an injunction to the other Court. The view taken in India was that such an approach would defeat the real objective of the Indian equivalent of s. 54(b) and therefore the language of the Indian equivalent was amended to bring the statute in line with what was originally intended.
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> 18. Relying on the passages contained in the judgment at p. 1278, he argued that the effect of the Malaysian statute now was specifically to exclude the Court from entertaining the plaintiff's application at all. He also exerted that the words of the statute excluded the inherent jurisdiction of the Court and also any other residuary power, vested in the Court of a similar nature which could be exercised by the High Court in England. Section 23(2) of the Judicature Act and the parallel powers conferred by the Courts Act 1948.
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> 19. I am unable to agree that s. 54(b) of the Specific Relief Act muzzles the Court in this way ...

I agree with my learned brother that s. 54(b) of the Specific Relief Act does not in anyway muzzle the Court from granting a *quia timet* injunction in an appropriate case. Here, Keruntum should first establish its legal rights under O.M. No. KG. 16 of 1988 which are yet to be determined, and in the absence of that, it cannot now purport to assert its legal rights in proposing to take proceedings against PPES when such legal rights over the forest areas are yet to be established. In *Fletcher v. Beeley*, 28 Ch D 688, Justice Parson explained the law as to actions *quia timet* as follows:

> There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action.

In this case PPES had satisfied the two necessary ingredients, that is, the letter from Keruntum of the threatened injunction order and para. 7 (an expenditure of RM300,000 per day without

considering other substantial financial commitments on the part of PPES) and para. 12 (Keruntum's paid up capital of RM10,000) of the affidavit of Leslie Majoribanks dated 17 April 1989 - (Encl. 4).

In the result I would rule that the Court has jurisdiction to grant the interim injunction as it did and since it is my view that s. 54(b) of SRA does not in any way muzzle the Court in granting a *quia timet* injunction, the submission of Mr. Colin Lau that "where there can be no perpetual injunction, there can be no temporary injunction" cannot be sustained. I fully subscribe to the views that "inherent power of the Court cannot be invoked to nullify or stultify a statutory provision" (see p. 1273 of *Indian Cotton Corporation* case). But here the Court is not invoking the inherent powers of the Court.

Having thus ruled that the Court has the power to grant the interlocutory injunction I next have to consider whether there are valid grounds for me to set aside the interlocutory injunction granted to PPES.

Mr. Colin Lau submitted that the interlocutory injunction should be set aside by me on the grounds:

(a) that the onus is on PPES to demonstrate that on the available evidence Keruntum's intended action is bound to fail or frivolous;

(b) that there has been non-disclosure of material facts.

Both Counsels dwelt at length on the facts and law regarding whether Keruntum's intended action is bound to fail and also the O.M. No. KG. 16 of 1988 filed by Keruntum and the effects thereof. In my view I should refrain from considering and deciding on the facts and the law as far as possible as to do so would amount to me deciding on the facts and law in O.M. No. KG 16 of 1988 and the present suit and it is best, I think, that the facts and the law be properly determined and decided upon at the proper hearing of O.M. No. KG 16 of 1988 and the present suit. It suffices for me at this juncture only to say that the timber licenses to PPES were issued before Keruntum obtained leave of the Court to apply for the order of *certiorari* and before the order for stay was issued against the Minister for Resource Planning. If Keruntum elected to file the application for *certiorari* late and slept on its rights, then it has itself to be blamed for the timber licenses to be given to PPES. At most, the Minister of Resource Planning and Director of Forests may have only knowledge of the notice of Keruntum that it intended to challenge the revocation of its licence in a Court of law (Encl. L2A) though Mr. Fong submitted that they had no knowledge of this fact. I do not agree that the Minister of Resource Planning and the Director of Forests had no knowledge of the intended action of Keruntum as to accept such submission of Mr. Fong would signify that the Setiausaha Tetap kept the letter of Keruntum's in which it indicated its intention to challenge the validity of the Minister's decision on the revocation of its timber licence (Exhibit L2A) close to his chest when it is a very important matter that should be his (Setiausaha Tetap) paramount duty as an officer to disclose or bring to the attention of his superior i.e., the Minister, at least, if not the Director of Forests, of the contents of L2A otherwise it may amount to dereliction of duty on the part of the Setiausaha Tetap. I am of the view that L2A must have been brought to the attention of the appropriate authorities as can be seen from the speed with which the timber licenses were issued to PPES. Be that as it may the reason put forth that the timber licenses were issued after the time set by the Forest Ordinance for appeal by Keruntum to the Yang Di Pertua Negeri against the Minister's decision to cancel Keruntum's licence had lapsed, would seem to be plausible and would not perhaps amount to *mala fide* on the part of the licensing authorities. As

the order obtained by Keruntum has no retrospective effect, the effects of such order, including possible contempt, are, I think, matters for consideration in O.M. No. KG. 16 of 1988.

What is clear, in my view, is that Keruntum's licence was revoked and as such Keruntum could no longer operate the forest areas granted under the revoked licence until such time as the challenge of the revocation of the licence by Keruntum is determined by the Court in O.M. No. KG 16 of 1988. Whether Keruntum succeeds or not in O.M. No. KG 16 of 1988 is an open question and it is not for me at this juncture to speculate. On the other hand PPES were given the timber licenses according to the Forest Ordinance and PPES therefore claimed that it should not be precluded from exercising its rights under the timber licenses validly given to them at least not until the determination of O.M. No. KG 16 of 1988 or the present suit. Whatever dispute there is between Keruntum and the licensing authorities is not the concern of PPES. It would appear therefore that Keruntum's intended action here could very well come within the purview of frivolous and abuse of the process of the Court intending to have two parallel actions to determine its legal rights over the disputed forest areas when in so far as the present action is concerned PPES is asserting that it had valid timber licenses and PPES should not be precluded from its operations of the licensed areas. To this end, it may be appropriate, to cite the case of *Si Rusa Beach Resort Sdn. Bhd. v. Asia Pacific Hotels Management Ptd. Ltd.* [1984] 1 CLJ (Rep) 346 where the Federal Court held:

> the learned trial Judge was correct in holding that there were serious questions to be tried in this case but he failed to consider that at all material times the appellant was in possession and control of the hotel. If the *status quo* is to be maintained the only order that could be properly made is to allow the appellant to continue to run the hotel until the action is finally litigated and a decision made thereon.

In the present action PPES is in possession of the forests area with permits to enter the coupe by the Forest Department and the timber licenses issued to it and as such I am of the view that PPES should be allowed to continue with operations of the forest areas granted to it without hindrance until the determination of Keruntum's action in O.M. No. KG 16 of 1988 or the present suit. In the event that Keruntum were to succeed in O.M. No. KG 16 of 1988 or the present suit, then it is a matter for the authorities and PPES to sort out the problem arising therefrom. On this ground, I would say that the interlocutory injunction should not be set aside.

(b) Non-disclosure of Material Facts

Mr. Colin Lau submitted that PPES in its application for interlocutory injunction did not set out the facts fully and accurately and thereby has not disclosed all material facts. A perusal of the affidavit of Leslie Marjoribanks dated 17 April 1989 in support of the application of PPES would show by way of Exhibit 'E' (letter from Keruntum) at para. 3 thereof as follows:

> As the matter of cancellation of Timber Licence No. T/0279 is in the Court, we regard such activities as unlawful. Hence we have been advised to take out injunction proceedings against such persons.

Though the facts may not be fully and accurately set out therein, it is in my view sufficiently brought to the attention of the Court *vide* Exhibit 'E' read together with paras. 10, 11, 12 and 13 of Leslie Majoribanks (Encl. 4). In any event, the short answer to Keruntum's allegation of non-disclosure of material facts can be found in the case of *Professor Dr. A. Kahar Bador & Ors. v. N. Krishnan & Ors.* [1982] CLJ (Rep) 630 where Hashim Yeop A. Sani J (as he then was) said:

> An interlocutory injunction is merely provisional in its nature, and does not conclude a right. It is said that a person who comes to the Court for an interlocutory injunction is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges. It can be seen that in an application for an interlocutory injunction the Court interferes on the assumption that the party who seeks its interference has the legal right which he asserts. A man who seeks the aid of the Court must be able to show a fair *prima facie* case in support of the title which he asserts. He is not required to make out a clear legal title. It is sufficient if he satisfies the Court that he has a fair question to raise as to the existence of the legal right which he sets up, and that there are substantial grounds for doubting the existence of the alleged legal rights, the exercise of which he seeks to present. It has also been accepted that the mere existence of a doubt as to the plaintiff's right to the property, interference with which he seeks to restrain, does not of itself constitute a sufficient ground for refusing an injunction.

Here, clearly PPES had through the affidavit of Leslie Majoribanks and the exhibits annexed thereto like the timber licenses etc. would show its legal rights to work on the licensed forest areas.

I would, in the circumstances, rule that Keruntum fails on this ground to get the Court to set aside the interlocutory injunction.

Even assuming that if Keruntum were to succeed in O.M. No. KG 16 of 1988, can Keruntum be adequately compensated? Looking at the affidavit of Leslie Majoribanks in Encl. 4, it is not disputed that PPES and/or its contractors expended a considerable sum of money i.e., to the tune of RM109,659,000 by capital outlay on machinery and equipment apart from construction of roads at an estimated costs of RM4 million. Further it is not disputed that PPES is a company backed by the State of Sarawak Corporation and as such, I think, PPES could adequately compensate Keruntum in the event Keruntum succeeds. On the opposite side, if Keruntum fails, and in view of its capital of RM10,000 only it would be well-nigh impossible for it to adequately compensate PPES in view of the large sums running into millions of ringgit that had been expended by PPES. I do not see the necessity or the practicality of Keruntum's application as per its para. 4 of the summons for all proceeds to be paid into Court or into joint account of the solicitors for both parties. Whatever are the proceeds of PPES can be verified from the records with the Forest Department and as a limited company PPES has to maintain a proper account and the fears of Keruntum in this respect, in my view, are unfounded and does not justify me making the order as prayed by Keruntum.

In the result I am of the opinion that Keruntum can be adequately compensated as opposed to PPES been adequately compensated for the reasons set out by me earlier and further as PPES had valid timber licenses (unless ruled otherwise) or the Court ruled in favour of Keruntum in O.M. No. KG 16 of 1988, the *status quo* should be maintained and the balance of convenience lies in favour of PPES.

(i) Application by Keruntum under O. 18 r. 19 of Rules of the High Court

The power of the Court to strike out parts of the indorsement of writ is clearly stated by Singleton LJ in *Day v. William Hill* (Park Lane) [1949] 1 KB 632; [1949] 1 All ER 219, CA as follows:

> It is clear that under the inherent jurisdiction of the Court there is power to strike out part of an indorsement on a writ.

I would say straightaway that looking at the statement of claim of PPES I see no valid grounds

to grant the application prayed for by Keruntum as it is clearly established that PPES had valid timber licenses issued to it by the proper authorities until otherwise determined by the Court and that they are now operating on the licensed areas and have expended considerable sums of money. In my view to grant Keruntum's application would in effect be to determine issues which are in dispute at an interlocutory proceeding. As I said earlier the quarrel between Keruntum and the licencing authorities is a matter to be sorted out between them and PPES has got nothing to do with it and neither is PPES a party to such dispute.

Keruntum's application to strike out certain paragraphs of PPES's statement of claim is clearly not sustainable in view of decision on the setting aside of the interlocutory injunction and at most the said application may have its merits only in respect of para. 9(d) which may be scandalous and completely irrelevant and wholly unnecessary for the due prosecution of the action and I would accordingly order that para. 9(d) of PPES's statement of claim be struck out.

In the result, Keruntum's application, except in so far as the order striking out para. 9(d) of PPES's statement of claim, is dismissed with costs to PPES.

Also found at [1990] 1 CLJ 528